

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission:		Kaua‘i Police Commission	Meeting Date	February 23, 2018
Location	Mo`ikeha Building – Meeting Room 2A/B		Start of Meeting: 9:03 a.m.	End of Meeting: 11:58 a.m.
Present	Chair Gerald Bahouth; Vice Chair Mary K. Hertog; Commissioners: Catherine Adams, Savita Agarwal, Kevin Mince, Roy Morita and Donald Okami Sr. Also present: Boards & Commissions Office Staff: Support Clerk Mercedes Omo, Administrator Nicholas Courson; Office of the County Attorney: County Attorney Mauna Kea Trask; Police Department: Chief of Police Darryl Perry, Deputy Chief Michael Contrades, Assistant Chiefs Bryson Ponce and Paul Applegate, Lieutenant James Miller and other rank and file members in the Kaua‘i Police Department.			
SUBJECT	DISCUSSION			ACTION
Call To Order				Chair Bahouth called the meeting to order at 9:03 a.m. with seven Commissioners present constituting a quorum.
Chair’s Comments/ Announcements	Chair Bahouth asked if there was anyone in the audience who wished to testify on any of the items listed on the agenda. Seeing none, he moved on to the approval of the meeting minutes.			
Approval of the Meeting Minutes	Chair Bahouth called for a motion to approve the Open Session Meeting Minutes of January 26, 2018.			Mr. Morita moved to approve the meeting minutes as circulated. Ms. Adams seconded the motion. The motion carried 7:0.
Presentation by Assistant Chief Bryson Ponce on SHOPO Grievances and Collective Bargaining Procedures	Assistant Chief Ponce began by providing the Commissioners with a handout reflecting data on SHOPO’s (State of Hawai‘i Organization of Police Officers) contract agreement relating to Article 32, <u>Grievance Procedure</u> , and information on how the State of Hawai‘i Labor Relations Board conducts hearings to decide complaints filed by the public and private sector employees, employee organizations or unions, and employers alleging prohibited or unfair labor practice complaints. AC Ponce stated that his presentation would be primarily on Article 32 which specifically deals with the grievance procedure. He explained that there are 57 Articles in the SHOPO contract, and in all of the articles, if there was any type of misinterpretation or misapplication, it would fall under Article 32. He further explained that when filing a grievance, the main thing to			

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	<p>remember is the Statement of Intent, which is the sincere desire of both parties to have their grievances settled as fairly and quickly as possible and that both the employer and the employee's union will always negotiate in good faith.</p> <p>Before continuing on with his presentation, Chief Perry asked AC Ponce if he could provide the Commissioners with a brief historical background on how he became a union representative.</p> <p>AC Ponce shared that in his second year as a Police Officer in the Kaua'i Police Department, he was brought on board the Police Union which he served as the Vice Chair for a couple of years before being elected to the position of Chair. After serving as Chair for a couple of terms, he became the secretary for the State Board of the Police Officers Union. He is grateful for having the opportunity to serve as a bargaining unit member which enabled him to take part in three contract negotiations on the union side and then eventually on the management side.</p> <p>AC Ponce continued on and explained that grievances are complaints filed by the bargaining unit employees (lieutenants and below) or by the union individually or on the employee's behalf, alleging that a violation of misinterpretation or misapplication of a provision of the agreement had occurred. Whenever the grievance procedure is not applicable to the jurisdiction, it usually involves a promotional dispute and it has to be filed at Step II (Chief or the Chief's representative) and not at Step I, which is the bureau commanders and assistant chiefs. Once the grievance reaches Step I, the grievant can either file it on their own or with the union, and the Department will then receive a written notice to the effect that they think Article 15 (overtime) was violated or they think Article 46 (meals) was violated for those reasons.</p> <p>From there, a meeting would be scheduled where both the bureau commander and the union will have a chance to hash things out, and the employee will have a turn to state their case as to why they feel they should be fully compensated or entitled to something. The Department would then have a chance to provide their own comments and then they will render a decision in writing. If the decision was not satisfactory to the union or the employee, they have the option to take it to Step II (Chief or his representative) and then the whole process would repeat</p>	

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	<p>itself. But if the issue was not resolved at that level, it goes up to Step III (Personnel Services/Personnel Director); however, that process is a little bit more engaged in that the union will usually bring up more facts, prior grievances, and arbitration decisions that ruled in favor of the union or employee, and present all of that to the Director of Human Resources. Likewise, the Department would do the same and present its case to the merits as to why they feel they did the right thing, and then the Director of Human Resources would render a decision and send it to the union where both the union and the employee would have a chance to review the decision and decide whether or not they can live with a decision that’s partial to what they feel they should be compensated for, or it could be a flat out denial.</p> <p>If the grievance was still not satisfactorily settled, the union may exercise its right to arbitrate the grievance and it would go to Step IV (Arbitration). Selection of an arbitrator shall be made within 20 calendar days after the notice of intent to arbitrate is filed, and part of that process will include a list of five names mutually agreed upon by both parties. But if a selection cannot be made, both parties would have to select from a list of five names submitted by the Hawai‘i Labor Relations Board.</p> <p>Aside from the arbitration process, any employee or the union can file their grievances directly with the Hawai‘i Labor Relations Board which, in the public sector, has jurisdiction over employers and employees of the State of Hawai‘i, counties, the Judiciary, the Department of Education, the public charter schools, the University of Hawai‘i system, and the Hawai‘i Health Systems Corporation. In the private sector, they have jurisdiction over agricultural employees and employers, as well as the employers and employees who are not subject to the jurisdiction of the National Labor Relations Board.</p> <p>AC Ponce shared that there was one complaint in particular had to do with the Department’s push to implement the use of body-worn cameras. SHOPO, in their own view, felt that it was a mutual consent issue in that if they did not agree to the use of the body-worn cameras, the Department could not implement the program, but they went ahead and implemented the program and as a result, SHOPO filed a complaint with the Hawai‘i Labor Relations Board.</p>	

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	<p>Going back to the arbitration process as stated in the SHOPO handout, AC Ponce stated that once the process is completed, the union would bring in their own attorney, or if it's an expedited arbitration, they would have one of their senior business agents to argue the case. In the Department's case, they would usually have one of the county attorneys or another entity do a presentation on the facts and criteria which would be vital to the next process. Once the decision is made, the arbitrator will render an award in writing no later than 30 calendar days after the conclusion of the hearings. All renderings are final and binding, and no appeal can be made by either parties. However, there were a couple of incidents where management chose to challenge the arbitrator's decision, not for the fact that they didn't agree that the arbitrator's decision is final and binding, but because they felt that the arbitrator acted outside of their scope when they made their ruling and did not comply with the limitations as to their powers and authority.</p> <p>The final step of the grievance process is Step IV which is an arbitration of an adverse action resulting from an employee's failure to meet his or her performance requirements. Prior to Act 253 being incorporated into law, there really was no process for performance-type grievances; it primarily was disciplinary grievances, grievances out of any type of violations of the SHOPO contract. However, about eight years ago, there was a shift in the process where now the employees could be terminated if they didn't meet certain standards. When that happens, a performance judge would need to be brought in as a neutral third party selected by a list of nine persons whom the employer and the union have mutually agreed are eligible to serve as the performance judge. The seven criteria's used in determining whether the employer's action was with or without merit include: 1) the employee was made aware of his or her current job description and job-related performance requirements; 2) evaluation process and its consequences were discussed with the employee; 3) evaluation procedures were observed, including providing the employee the opportunity to meet, discuss and rebut the performance evaluation, and apprising the employee of the consequences of failure to meet performance requirements; 4) the evaluation was fair and objective; 5) the employee was provided performance feedback during the evaluation period and, as appropriate, the employee was offered in-service remedial training in order for the employee to improve and meet performance</p>	

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	<p>requirements; 6) the evaluation was applied without discrimination; and 7) prior to the end of the evaluation period that the employee is being considered for discharge due to failure to meet the performance requirements, the employer considered the feasibility of transferring or demoting the employee to another position for which the employee qualifies. For the most part, the Department has not gotten to this step of having to terminate an employee or handout harsh discipline because a lot of the performance appraisal criteria are outdated.</p> <p>But thanks to Deputy Chief Contrades' efforts, he managed to revise the performance standards to make it more in line with the performance policy; they are clearer, measurable, objective, and fair. All the Department has to do at this point is meet with the union to get them on board. Some of things that could possibly have an effect on an officer's performance appraisal resulting in disciplinary action are: 1) failure to be able to testify in court, 2) not being able to qualify to have a firearm at the shooting range; 3) not being able to operate a vehicle while under pressure; 4) unable to comprehend changes in the law; and 5) not being able to write reports. It is the hope of the Department that through its recruiting and having the officer go through extensive training, it will minimize any disciplinary actions to a smaller degree.</p> <p>Chair Bahouth asked the Commissioners if they had any questions for AC Ponce.</p> <p>Vice Chair Hertog asked what would happen if the Chief wanted to implement a physical fitness standard, which she assumes would be in correlation with the union prior to that, and if the officers would have a period of time for them to meet those standards in order for them to remain as a sworn officer.</p> <p>AC Ponce stated that as for now, the employees who participate in the program are not being disciplined if they don't pass the physical readiness test. The goal is to get them to a physical fitness level to keep them safe on the job and where they can sustain life after the job. But if it ever came to the point where they didn't pass, they could be disciplined or terminated, but before that can happen different steps needs to be in place with the union, like policies which include all of the criteria set forth in the performance judge standards before any disciplinary</p>	

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	<p>actions can take place. The Department really does not want to handout any disciplinary actions; in fact, their goal is to see where each officer is at in terms of their level of fitness where they should be able to do an agility run, bench press 85% of their body weight, do 30 sit-ups and 30 push-ups, run a 30-meter sprint in 69 seconds, run a mile and a half in 17 minutes.</p> <p>Vice Chair Hertog asked, based on his comments, if it was basically a volunteer program without consequences in regard to those particular standards to which AC Ponce replied yes.</p> <p>Mr. Okami asked if the Department has a physical fitness standards test in place right now to which AC Ponce replied that the Department has an entry-level standard test that all potential employees must pass in order to get hired, and if they are hired, they would have to do a yearly PRST (Physical Readiness Standard Test) to get a baseline on where they're at. Mr. Okami stated that dealing with the union can be tough because any changes to the PRST will have a direct effect on the work conditions. AC Ponce shared that the three criteria the union always seems to bring forward related to mandatory bargaining include wages, hours, and conditions of employment. However, when it comes to conditions of employment, it's not very clear, and as management, their views are based on the law as to the definition of what conditions of employment mean. As for the union, their views are based on the different type of standards that they have used throughout history.</p> <p>Mr. Morita asked what happens when a SHOPO member files a grievance against another SHOPO member, and what SHOPO's policy in regard to representation is to which AC Ponce replied that SHOPO would still represent both parties.</p> <p>Ms. Agarwal asked what the Department's procedure was if an employee was not performing up to the Department's standards because of things happening in the employee's personal life, and how does the Department handle tension when an employee reports there is something going on in the Department to which AC Ponce replied that usually a fellow officer(s) or the officer's bureau commander would take note of the officer's change in disposition, then they would either try to address the situation as soon as possible by recommending that the officer</p>	

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	<p>seek help from the chaplain, call the employee assistance program, look for support from their peers, or have a one-on-one conversation with the officer themselves.</p> <p>Mr. Morita asked what happens after the arbitrator makes a final decision and the employee disagrees with it even though they know that the decision is final and binding, and if there was a step beyond the arbitration.</p> <p>County Attorney Mauna Kea Trask replied yes, and explained that under the Hawai'i Revised Statute 658-23, there is a provision that says upon motion to the court by a party in an arbitration procedure (this goes for either the employer or the union), the party can petition the court to vacate an award if it was not within the scope of the arbitrator's authority; was procured by corruption, fraud or other undue means; and if there's evidence of impartiality by the arbitrator. He noted that there's a whole litany of reasons under the statute. He added that collective bargaining is a constitutional right between the employee representative and the employer group, and a lot of the litigation doesn't necessarily focus on the underlying issue, but on the arbitrator's powers and authority.</p> <p>Mr. Mince asked how many SHOPO reps are in the Police Department to which AC Ponce replied that there were roughly about 30 representatives and they represent the various agencies and districts. Mr. Mince asked how the representatives are elected to which AC Ponce replied that the union holds their elections once every four years, and for the chapter reps, it's held once every two years. Mr. Mince asked for the approximate number of grievances that are filed every year to which AC Ponce replied that he didn't have the answer, but in his bureau, most of the grievances dealt with overtime or meals disputes, and for the disciplinary type of grievances, it depended on the amount of cases that come before the Administrative Review Board and if discipline was imposed. When he was with the union, the biggest factor they would look for was if the discipline fair and if the employee was salvageable, but if it involved criminal cases, the union would not get involved.</p>	

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	<p>Mr. Trask reminded the Commissioners that the agenda item was on collective bargaining procedures, and getting into specific cases or anything of that nature is straying from the agenda. He noted that in today's society, this type of stuff is a matter of public importance and is tied up with significant interest of personal privacy, so the Commission would have to place the item on another agenda for discussion and most likely take it into Executive Session.</p> <p>With no further questions, the Commissioners thanked AC Ponce for a great presentation.</p>	
Chief's Monthly Reports and Pertinent Updates	<p>Chief Perry made the following announcements:</p> <ul style="list-style-type: none"> • He traveled to Washington, D.C. to attend the National Narcotics Association Meeting to solicit support and funding for the HIDA Program to continue the State's initiative to disrupt and arrest drug traffickers. The highlight of the conference was the discussion on the opioid epidemic. • April 6, 2018, is the County's Employee Recognition Banquet – KPD's employees of the year are Sergeants Daniel Oliveria and Jason Matsuoka, Criminalist Stephanie Regan, and KPD's Derelict Abandoned Vehicle Coordinator Nancy Palaracio. The event will be held at the Kaua'i Veteran's Center from 5:30 p.m. – 9:30 p.m. Cost is \$25.00 for Adults and \$15.00 for Children ages 5-11. • The Abandoned Vehicle Bill is at the legislature. If the bill passes, it would impose that all counties must remove and dispose of all abandoned vehicles from all public roadways within 10 business days. The Department have submitted testimony twice opposing the bill, arguing that the entire removal process will take 45 days to complete and with a staff of just one person it would be impossible for the Department to be in compliance with the law. • Another bill the Department is closely monitoring is a bill that would prohibit the use of drones and unmanned vehicles for law enforcement unless a warrant is obtained. • Promotional test will be done on March 3, 2018 for lieutenants and sergeants. • He met with Hawai'i's new U.S Attorney Mr. Kenji Price • Deputy Chief Contrades met with the other island chiefs to talk about officers suicide, strategic response to Hawaiian Sovereignty movements, unmanned aerial vehicle 	

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	<p>program, body worn cameras, legislative updates, in-car cameras, police apprentice program, medical marijuana and employment issues.</p> <p>Mr. Okami asked if the Department already has a drone to which Deputy Chief Contrades replied that the Department currently has two drones and is in the process of getting a third drone. He added that Department is working on finishing up their application with the FAA (Federal Aviation Administration) and that the pilots who are going to be manning the drones will be undergoing training sometime next month.</p> <p>Mr. Trask added that there is an exception to the requirements when it comes an airplane to flying over an open and plain view, and there are certain things that seem to have a disconnect in that if it’s okay to do fly overs in an open space area, but when it comes to an officer stopping a car and he or she sees a gun on the passenger seat that should also apply to drones because its effectively the same thing. He noted that the Department is not to asking for anything different, they just feel that these type of scenarios should be treated the same.</p> <p>Chair Bahouth asked relative to the abandoned vehicle bill, does the 15 days mean that the car would remain on the road or does it mean that the car is to be disposed of. Deputy Chief Contrades stated that the Department felt that the 15 days is a reasonable amount of time to post, remove and dispose as opposed to having just 10 days to do all of that.</p> <p>Chair Bahouth asked if their request is approved do they have to ask for more funding in order to hire the additional staff to which Deputy Chief replied yes, either way if the bill does pass as written, they would still have ask another position in order to get the work done and be in compliance with the law; one person to take care of one side of the island and the second person to take care of the other side of the island. In normal circumstances, the Department’s Vehicle Coordinator is generally able to complete the task in a week to three weeks depending on the location of the vehicles and how busy things are.</p>	

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	<p>Mr. Okami asked if the Kaua‘i representatives are behind the Department to which Deputy Chief Contrades replied that they have not yet reached out to them, but when all of the amendments to the bill are done, they definitely will be reaching out to them.</p> <p>Mr. Morita asked if exceptions are made for military personnel to which Deputy Chief Contrades replied yes, and from what he understands, the City and County of Honolulu was involved in a lawsuit and lost because you have to give the military 60 days before you can seize the vehicle.</p> <p>Chief Perry announced that with budgetary reviews are underway, he along with his senior staff met with the Administration and they basically submitted a flat budget with the exception of the union raises. Also, the Department is looking at upgrading their body worn camera system to a higher grade wireless system which will provide a better range of view. In addition, discussions are in works on equipping the cellblock personnel with body worn cameras as well.</p> <p>Chair Bahouth asked what’s going to happen to the current cameras to which Assistant Chief Gausephol replied that the Axon Company profits come primarily from the software in terms of data storage. As for the older models, Axon has no use for them so the Department is going to destroy the cameras at no additional cost.</p> <p>Mr. Okami asked about the active shooters in schools. Staff informed the Commissioners that if they want to discuss the matter or any other matter, they need to put it on the next agenda to be in accordance with the Sunshine Law.</p>	
Announcements	Next monthly meeting is scheduled for 9:00 a.m. on Friday, March 23, 2018, at the Mo‘ikeha Building, Meeting Room 2A/2B.	
Executive Session Items	Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission to review and discuss charges brought against an officer or employee of the County, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be	At 10:05 a.m. Vice Chair Hertog began to cite the Hawai‘i Revised Statutes to bring the meeting

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ES KPC 2018-001	held; and to consult with its attorney on issues pertaining to the Commission's and the County's powers, duties, privileges, immunities, and/or liabilities as they may relate to the following agenda items: Monthly update by Chief Perry on the status of the Department's disposition on all formal notarized complaints that were filed with the Police Commission and referred to the Office of the Chief for further review.	into Executive Session.
ES KPC 2018-002	Monthly update by Chief Perry on any significant adverse incidents/events involving personnel in the Kaua'i Police Department that could potentially impact the County, the Commission, and the Kaua'i Police Department.	
ES KPC 2018-005	Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a) and (4), the purpose of this Executive Session is for the Commission to consult with its attorney as to its powers, duties, privileges, immunities, and/or liabilities as they may relate to a communication dated February 7, 2018, from Chair Gerald Bahouth to Police Chief Darryl Perry regarding the Department's handling of public complaints.	
ES KPC 2018-006	Formal new notarized complaint no. KPC 2018-001, received on February 12, 2018. The complainant alleges that her partner was arrested without being told why, subjected to an illegal search and seizure, and failure to communicate regarding the whereabouts of the complainant's property.	
ES KPC 2018-007	Formal new notarized complaint no. KPC 2018-002, received on February 12, 2018. The complainant alleges misconduct on the part of an off-duty officer by not identifying himself by name or badge number.	
ES KPC 2018-008	Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this Executive Session is for the Commission to approve the Executive Session meeting minutes of January 26, 2018; and to consult with its attorney on issues pertaining to the Commission's powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.	Ms. Adams moved to enter into Executive Session. Mr. Okami seconded the motion. The motion carried 7:0. At 10:07 a.m. the Commissioners entered into Executive Session.

SUBJECT	DISCUSSION	ACTION
Return to Open Session	<p>At 11:57 a.m. the Commissioners reconvened in Open Session. Chair Bahouth called for a motion to ratify the actions taken in Executive Session.</p>	<p>Ms. Adams moved to ratify the actions taken in Executive Session for the following items. Vice Chair Hertog seconded the motion. The motion carried 7:0.</p> <p>ES KPC 2018-001: Briefing provided by Lt. James Miller, Office of Professional Standards.</p> <p>ES KPC 2018-002: Briefing provided by Chief of Police Darryl Perry.</p> <p>ES KPC 2018-005: Briefing provided by County Attorney Mauna Kea Trask and Lt. James Miller, Office of Professional Standards. (On-going)</p> <p>ES KPC 2018-006: Motion carried 7:0 not to sustain the complaint.</p> <p>ES KPC 2018:007: Motion carried 7:0 not to sustain the complaint.</p>

SUBJECT	DISCUSSION	ACTION
		ES KPC 2018-008: Motion carried 7:0 to approve the Executive Session Meeting Minutes of January 26, 2018.
Adjournment	With no further business to conduct, Chair Bahouth called for a motion to adjourn the meeting.	Vice Chair Hertog moved to adjourn the meeting. Ms. Adams seconded the motion. The motion carried 7:0. At 11:58 a.m. the meeting adjourned.

Submitted by: _____
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: _____
Gerald Bahouth, Chair

(x) Approved as circulated on March 23, 2018

() Approved as amended. See minutes of _____ meeting.